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To: The Chair and Members of the  
Standards Committee

County Hall  
Topsham Road  
Exeter  
Devon  
EX2 4QD

(See below)

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Your ref :  
Our ref :

Date : 29 June 2020  
Please ask for : Karen Strahan 01392 382264

Email: [karen.strahan@devon.gov.uk](mailto:karen.strahan@devon.gov.uk)

## **STANDARDS COMMITTEE**

Tuesday, 7th July, 2020

A meeting of the Standards Committee is to be held on the above date at 2.15 pm in the This will be a virtual meeting, for the joining instructions please contact the Clerk for further details on attendance and / or public participation. to consider the following matters.

P NORREY  
Chief Executive

## **A G E N D A**

### **PART I - OPEN COMMITTEE**

1 Meeting Procedures - Briefing and Etiquette

The Head of Democratic Services to present.

2 Apologies for absence

3 Appointment of Chair

4 Items Requiring Urgent Attention

Items which in the opinion of the Chair should be considered at the meeting as a matter of urgency.

### **PART II - ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF PRESS AND PUBLIC ON THE GROUNDS THAT EXEMPT INFORMATION MAY BE DISCLOSED**

5 Exclusion of the Press and Public

**Recommendation:** that the press and public be excluded from the meeting for the following items of business under Section 100(A)(4) of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 and 2 of Schedule 12A of the Act namely, information relating to an individual and information likely to reveal the identity of an individual and in accordance with Section 36 of the Freedom of Information Act 2000, by virtue of the fact that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.


6 Allegation of Breach of Members Code of Conduct

Documentation enclosed and attached as follows:

- a Constitution - Part 6a (Code of Personal Conduct) Members Code of Conduct (Pages 1 - 6)
- b Guidance/Procedural Note for the Assessment Determination of Allegations of Breaches of the Code of Conduct for Members (Pages 7 - 26)
- c Initial Complaints (Pages 27 - 38)
- d Independent Person's Comments (Pages 39 - 40)
- e Subject Member - Response to Complaints (Pages 41 - 44)

*Members are reminded that Part II Reports contain confidential information and should therefore be treated accordingly. They should not be disclosed or passed on to any other person(s).*

*Members are also reminded of the need to dispose of such reports carefully and are therefore urged to return them to the Committee Secretary at the conclusion of the meeting for disposal*

<b>Membership</b>
County Councillors Councillors R Bloxham and A Connett <u>Co-opted Member</u> I Hipkin
<b>Declaration of Interests</b>
Members are reminded that they must declare any interest they may have in any item to be considered at this meeting, prior to any discussion taking place on that item.
<b>Access to Information</b>
Any person wishing to inspect any minutes, reports or lists of background papers relating to any item on this agenda should contact Karen Strahan 01392 382264. Agenda and minutes of the Committee are published on the Council's Website and can also be accessed via the Modern.Gov app, available from the usual stores..
<b>Webcasting, Recording or Reporting of Meetings and Proceedings</b>
The proceedings of this meeting may be recorded for broadcasting live on the internet via the 'Democracy Centre' on the County Council's website. The whole of the meeting may be broadcast apart from any confidential items which may need to be considered in the absence of the press and public. For more information go to: <a href="http://www.devoncc.public-i.tv/core/">http://www.devoncc.public-i.tv/core/</a>
In addition, anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chair. Any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chair or the Democratic Services Officer in attendance so that all those present may be made aware that is happening.
Members of the public may also use Facebook and Twitter or other forms of social media to report on proceedings at this meeting. An open, publicly available Wi-Fi network (i.e. DCC) is normally available for meetings held in the Committee Suite at County Hall. For information on Wi-Fi availability at other locations, please contact the Officer identified above.
<b>Emergencies</b>
In the event of the fire alarm sounding leave the building immediately by the nearest available exit, following the fire exit signs. If doors fail to unlock press the Green break glass next to the door. Do not stop to collect personal belongings, do not use the lifts, do not re-enter the building until told to do so.
<b>Mobile Phones</b>
Please switch off all mobile phones before entering the Committee Room or Council Chamber
<b>If you need a copy of this Agenda and/or a Report in another format (e.g. large print, audio tape, Braille or other languages), please contact the Customer Service Centre on 0345 155 1015 or email: <a href="mailto:committee@devon.gov.uk">committee@devon.gov.uk</a> or write to the Democratic and Scrutiny Secretariat in G31, County Hall, Exeter, EX2 4QD.</b>
 Induction loop system available

## **NOTES FOR VISITORS**

All visitors to County Hall, including visitors to the Committee Suite and the Coaver Club conference and meeting rooms are requested to report to Main Reception on arrival. If visitors have any specific requirements or needs they should contact County Hall reception on 01392 382504 beforehand. Further information about how to get here can be found at: <https://new.devon.gov.uk/help/visiting-county-hall/>. Please note that visitor car parking on campus is limited and space cannot be guaranteed. Where possible, we encourage visitors to travel to County Hall by other means.

**SatNav** – Postcode EX2 4QD

### **Walking and Cycling Facilities**

County Hall is a pleasant twenty minute walk from Exeter City Centre. Exeter is also one of six National Cycle demonstration towns and has an excellent network of dedicated cycle routes – a map can be found at: <https://new.devon.gov.uk/travel/cycle/>. Cycle stands are outside County Hall Main Reception and Lucombe House

### **Access to County Hall and Public Transport Links**

Bus Services K, J, T and S operate from the High Street to County Hall (Topsham Road). To return to the High Street use Services K, J, T and R. Local Services to and from Dawlish, Teignmouth, Newton Abbot, Exmouth, Plymouth and Torbay all stop in Barrack Road which is a 5 minute walk from County Hall. Park and Ride Services operate from Sowton, Marsh Barton and Honiton Road with bus services direct to the High Street.

The nearest mainline railway stations are Exeter Central (5 minutes from the High Street) and St David's and St Thomas's both of which have regular bus services to the High Street. Bus Service H (which runs from St David's Station to the High Street) continues and stops in Wonford Road (at the top of Matford Lane shown on the map) a 2/3 minute walk from County Hall, en route to the RD&E Hospital (approximately a 10 minutes walk from County Hall, through Gras Lawn on Barrack Road).

### **Car Sharing**

Carsharing allows people to benefit from the convenience of the car, whilst alleviating the associated problems of congestion and pollution. For more information see: <https://liftshare.com/uk/community/devon>.

### **Car Parking and Security**

There is a pay and display car park, exclusively for the use of visitors, entered via Topsham Road. Current charges are: Up to 30 minutes – free; 1 hour - £1.10; 2 hours - £2.20; 4 hours - £4.40; 8 hours - £7. Please note that County Hall reception staff are not able to provide change for the parking meters.

As indicated above, parking cannot be guaranteed and visitors should allow themselves enough time to find alternative parking if necessary. Public car parking can be found at the Cathedral Quay or Magdalen Road Car Parks (approx. 20 minutes walk). There are two disabled parking bays within the visitor car park. Additional disabled parking bays are available in the staff car park. These can be accessed via the intercom at the entrance barrier to the staff car park.



**NB**   Denotes bus stops

### **Fire/Emergency Instructions**

In the event of a fire or other emergency please note the following instructions. If you discover a fire, immediately inform the nearest member of staff and/or operate the nearest fire alarm. On hearing a fire alarm leave the building by the nearest available exit. The County Hall Stewardesses will help direct you. Do not stop to collect personal belongings and do not use the lifts. Assemble either on the cobbled car parking area adjacent to the administrative buildings or in the car park behind Bellair, as shown on the site map above. Please remain at the assembly point until you receive further instructions. Do not re-enter the building without being told to do so.

### **First Aid**

Contact Main Reception (extension 2504) for a trained first aider.

## MEMBERS' CODE OF CONDUCT

### PART 1 GENERAL PROVISIONS

#### Public Duty and Private Interests: An introduction

- 1 This Code applies to you as a Member or a Co-opted Member of Devon County Council.
- 1.2 When acting in your capacity as a Member or Co-opted Member of the County Council, you should have regard to the Principles of Public Life namely, Selflessness, Honesty/Integrity, Objectivity, Accountability, Openness, Personal judgment, Respect for others, Duty to uphold the law, Stewardship and Leadership.
- 1.3 When acting in your capacity as a Member or Co-opted Member of the County Council –
  - (a) you must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, a member of your family, close associate or relevant person;
  - (b) you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
  - (c) when carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;
  - (d) you are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office;
  - (e) you must be as open as possible about your decisions and actions and the decisions and actions of the County Council and should be prepared to give reasons for those decisions and actions in accordance with any statutory requirements and any reasonable additional requirements imposed by the County Council or contained in its Constitution,
  - (f) you must declare any private interests, whether disclosable or personal, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out at Part 2 of this Code;
  - (g) you must, when using or authorising the use by others of the resources of the County Council, ensure that such resources are not used improperly for political purposes (including party political purposes) and that any use is in accordance with the County Council's reasonable requirements;
  - (h) you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or any similar Communications Protocol or Code produced by the County Council;
  - (i) you must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

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- 1.4 Whilst you may be strongly influenced by the views of others, it is your responsibility alone to decide what view to take on any question which Members have to decide.
- 1.5 Do nothing as a Member which you could not justify to the public.
- 1.6 The reputation of the County Council depends on your conduct and what the public believes about your conduct.
- 1.7 It is not enough to avoid actual impropriety, you should at all times avoid any occasion for suspicion or appearance of improper conduct.
- 1.8 It is your responsibility to comply with the provisions of this Code and also any formal Standards process / investigation that may occur.

## Definitions

2. In this Code –

*“interest or interests”* have the meanings set out in Part 2 of this Code

*“Relevant person”* means:

- you or
- your spouse or civil partner, or
- a person with whom you are living as husband and wife or as if they were civil partners or in a same sex marriage

and you are aware that that other person has an interest

*“relevant period”* means a period of 12 months ending with the date on which you notified the Monitoring Office of an interest

*“meeting”* means any meeting of –

- the County Council;
- the Cabinet of the County Council;
- any of the Council's or the Cabinet's, Committees, Sub-Committees, Joint Committees, Joint Sub-committees or Area committees;
- one or more Members, formal or informal and with or without officers, relating to the discharge of the County Council's functions where a formal record is made by a Council Officer.

*“member”* includes a co-opted member

## Scope

3. You must comply with this Code whenever you are acting in your official capacity, when:
  - (a) you are engaged on the business of the County Council; or
  - (b) you behave so as to give a reasonable person the impression that you are acting as a representative of the County Council.

## General obligations

4. You **must** –
  - (a) treat others with courtesy and respect,

(b) when reaching decisions on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any relevant advice provided to you by an officer of the County Council.

5. You **must not** –

(a) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;

(b) do anything which may cause the County Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010);

(c) bully any person (bullying may be characterised as any single act or pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine or coerce or has the effect of undermining or coercing an individual or group of individuals by gradually eroding their confidence or capability which may cause them to suffer stress or fear);

(d) intimidate or attempt to intimidate any person who is or is likely to be –

- (i) a complainant,
- (ii) a witness, or
- (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that any Member has failed to comply with the Council's Code of Conduct; or

(e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the County Council;

(f) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where–

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is:
  - (a) in the public interest; and
  - (b) made in good faith and
  - (c) in compliance with the reasonable requirements of the Council;

(g) prevent another person from gaining access to information to which that person is entitled by law;

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

*[NB: A complaint may be made to the Monitoring Officer or Standards Committee where any person thinks they have evidence which they think shows that a councillor has not followed the Council's Code of conduct; see*

*[http://www.devon.gov.uk/index/councildemocracy/county\\_councillors/councillorcomplaints.htm](http://www.devon.gov.uk/index/councildemocracy/county_councillors/councillorcomplaints.htm)]*

## **PART 2 INTERESTS**

### **Registration of Interests**

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6. You must, within 28 days of—

(a) this Code being adopted by, or applied to, the County Council; or

(b) your taking office as a Member or Co-opted Member of the County Council,

whichever is the later, and annually thereafter, provide written notification to the County Council's Monitoring Officer of:

(i) any disclosable pecuniary interest as defined by Regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife); and

(ii) any other personal interest laid down by the County Council, as set out at paragraph 7 below;

which will be recorded in the County Council's Register of Members' Interests and made available for public inspection including on the Council's website.

6.1 Within 28 days of becoming aware of any new interest or change to any interest already registered, you must register details of that new interest or change by providing written notification to the County Council's Monitoring Officer.

6.2 Whether or not an interest within paragraphs 7.1 and 7.2 below has been entered onto the County Council's register, you must disclose any interest to any meeting at which you are present in any matter being considered, in line with paragraph 8 below, where the matter is not a 'sensitive interest'.

6.3 Following any disclosure of an interest not on the County Council's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.

6.4 In relation to disclosable pecuniary interests, in this Part of the Code the expressions in the left hand column below have the meanings attributed to them in the right hand column:

"body in which the relevant person has a beneficial interest"	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director or in the securities of which the relevant person has a beneficial interest
"director"	includes a member of the committee of management of an industrial and provident society
"land"	excludes an easement, servitude, interest, or right over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income
"relevant authority"	means the authority of which you are a member
"relevant person"	means you, your spouse or civil partner, a person with whom you are living with as husband and wife or a person with whom you are living with as if you are civil partners
"securities"	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society



7. The interests you **must** register are:
- 7.1 - those disclosable pecuniary interests defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) as set out below, namely:
- (a) any employment, office, trade, profession or vocation carried on for profit or gain by you or a relevant person;
  - (b) any payment or provision of any other financial benefit (other than from Devon County Council) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your expenses, including any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;
  - (c) any contract which is made between you or, so far as you are aware, a relevant person (as defined at Para 2 above) (in which the relevant person has a beneficial interest) and the County Council:
    - (1) under which goods or services are to be provided or works are to be executed; and
    - (2) which has not been fully discharged
  - (d) any beneficial interest in land held by you, or so far as you are aware, a relevant person which is within the administrative area of the County Council;
  - (e) any licence (alone or jointly with others) to occupy land in the administrative area of the County Council for a month or longer
  - (f) any tenancy where (to your knowledge):
    - (1) the landlord is Devon County Council; and
    - (2) the tenant is a body in which you or, so far as you are aware, a relevant person has a beneficial interest.
  - (g) any beneficial interest that you or, so far as you are aware, a relevant person has in securities of a body where:
    - (1) that body (to your knowledge) has a place of business or land in the administrative area of the County Council and
    - (2) either:
      - (A) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
      - (B) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
- 7.2 - those other personal interests laid down by the County Council, namely your membership of any body to which you have been appointed by the County Council or exercising functions of a public nature directed to charitable purposes or whose principal purposes include influence of public opinion or policy, your membership of any other local Authority and of any political party or trade union.
- 7.3 In addition to those interests listed at 7.1 and 7.2 above which you are required to registered, you may wish also to declare membership of any body which, in your view,

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might create a conflict of interest in carrying out your duties as a County Councillor, such as membership of the Freemasons or any similar body.

- 7.4 Where the County Council's Monitoring Officer agrees that any information relating to your interests is "*sensitive information*" namely information whose availability for inspection by the public is likely to create a serious risk that any person may be subjected to violence or intimidation, you need not include that information when registering that interest, or, as the case may be, any change to that interest.
- 7.5 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded is no longer sensitive information, notify the County Council's Monitoring Officer asking that the information be included in the County Council's Register of Members' Interests.

## Declaration of Interests

8. Unless a dispensation has been granted\*, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a disclosable pecuniary interest as defined by Regulations referred to at Para 6(b)(i) and you must also observe any restrictions the County Council may place on your involvement in matters where you have any interest as defined by the Council and shown at Para 7 above.

*[\*See explanatory note appended to this Code, below].*

- 8.1 Where you have any interest in any business of the County Council and you attend any meeting at which that business is to be considered, you must:
  - (a) disclose to that meeting the existence and nature of that interest but where your interest is sensitive you are not required to disclose the interest but merely the fact that there is a disclosable pecuniary interest in the matter concerned;
  - (b) disclose any interest in accordance with the Council's reasonable requirements, no later than the commencement of the consideration of the business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;
  - (c) where you have a disclosable pecuniary interest, withdraw from the room or chamber where a meeting considering the business is being held at the commencement of the consideration of that business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;
  - (d) not seek to influence improperly any decision about that business;

unless you have obtained a dispensation from the County Council's Monitoring Officer.



## **Making a Complaint about a Devon County Councillor**

# Agenda Item 6b

## Contents

**Introduction**

**Part 1 - How do I make a complaint?**

**Part 2 - What is a Standards Committee?**

**Part 3 - What complaints does the Standards Committee deal with?**

**Part 4 - How should I set out my complaint?**

**Part 5 - What happens to my complaint - how is it processed and dealt with?**

**Part 6 - What happens after my complaint has been looked at?**

**Part 7 - Withdrawal of complaints**

**Part 8 - Complainant confidentiality**

**Part 9 - Conflicts of interests**

**Part 10 - Retention of Records**

**Part 11 - Generally**

**Part 12 - Assessment Criteria**

<https://www.devon.gov.uk/democrac>  
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## Part 1 - How do I make a complaint?

If you want to make a complaint about the conduct of a County Councillor or if you think that he or she may have breached the Code of Conduct for Members you may complain to the County Council's Standards Committee

The Code of Conduct for Members is set out in the [County Council's Constitution](#).

Any complaints about the conduct of County Councillors should normally be submitted, in writing, to:

Jan Shadbolt (County Solicitor)  
Devon County Council  
County Hall  
Topsham Road  
Exeter  
EX2 4QD

who will arrange for it to be considered by the Council's Standards Committee or for any other course of action to be taken, as appropriate. You may use the official [Complaint Form](#) referred to below or simply set out your complaint in a letter. Complaints may be sent in by post to the above address or by email ([members.services@devon.gov.uk](mailto:members.services@devon.gov.uk)). If you are unable to download a copy of the form from the Council's website a copy may be sent to you upon request. We can also help if English is not your first language.

If you are unable to make a written complaint we will offer to transpose your complaint onto a complaint form with an accompanying written statement (if required) which you will then be asked to sign or otherwise indicate to the Council's satisfaction that you wish to make a complaint in those terms. If you are unwilling to sign the documentation or fail to indicate to the Council's satisfaction that you wish to make a complaint in those terms it will not take any further action on the complaint unless the Monitoring Officer is satisfied that the circumstances justify a departure from this position. If you make a verbal complaint and simply decline to confirm the complaint in writing for reasons which the Council does not consider to be justifiable it will take no further action on the complaint. The Council does understand that complaints about sensitive personal issues, such as alleged harassment, bullying or victimisation may need to be progressed while preserving the confidentiality or anonymity of the complainant.

Some complaints will fall outside of the scope of this Procedure. If that happens the complaints will be forwarded to the relevant officers in the Council the complainant will be advised of this. Similarly if your complaint is about a District, Unitary or Town or

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Parish Councillor then you should send it to the relevant District or Unitary Council - in other words, the Council that collects your council tax.

<https://www.devon.gov.uk/democracy/>



Created on 09/04/19. For latest version please see <https://www.devon.gov.uk/democracy/guide/making-a-complaint-about-a-devon-county-councillor/>

## Part 2 - What is a Standards Committee?

The County Council's Standards Committee is a group of people appointed by the Council to help it maintain and promote high ethical standards. The Committee is made up of Councillors and co-opted members drawn from the community (who are not councillors or employees of the County Council).

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## Part 3 - What complaints does the Standards Committee deal with?

The Standards Committee can only deal with complaints about the behaviour of a County Councillor. It will not deal with complaints about things that are not covered by the Members' Code of Conduct. If you make a complaint to the Standards Committee it must be in writing. You should say who it is about and why you think they have not followed the Code of Conduct. The Committee cannot look at complaints that are about:

- incidents that happened before the Councillor was elected or chosen to serve;
- incidents that happened before the Council adopted the Code of Conduct other than incidents of alleged harassment, bullying or victimisation;
- the way the Council conducts or records its meetings; or
- that would not disclose a breach of the Code of Conduct.

Complaints about:

- the actions of the Council's employees;
- the way the Council has or has not done something; or
- decisions of the Council or one of the services it provides;

are the subject of a separate complaints system which can be accessed on the County Council's [Feedback/Complaints](#) system (please follow the link).

Ultimately, if you think the Council has not dealt with the matter properly and has failed to resolve a complaint locally, you can ask the Local Government Ombudsman to investigate.

<https://www.devon.gov.uk/democrac>  
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## **Part 4 - How should I set out my complaint?**

It is very important that you set your complaint out fully and clearly and provide all the information at the outset. You should also provide any documents or other material that you wish to be considered, wherever possible.

We recommend that you use our complaint form or provide a covering note summarising what you are complaining about, especially if your complaint includes a lot of supporting documentation. In the summary you should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross-reference it against the summary of your complaint.

You should be as detailed as possible and substantiate your complaint where you can, to demonstrate why you believe that the Councillor(s) complained about has breached the Code of Conduct.

It is very important that you set your complaint out clearly and provide at the outset all the information you wish the Council to consider. The Monitoring Officer may need to contact you to seek clarification of your complaint but this will not, hopefully, delay consideration of your complaint.

<https://www.devon.gov.uk/democracy/>



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## **Part 5 - What happens to my complaint - how is it processed and dealt with?**

Once you have made a complaint you will be told what will happen to it.

When a complaint is received which is within the scope of this Procedure the Council would aim to acknowledge receipt within 3 working days.

The Monitoring Officer will first carry out a preliminary assessment of whether the alleged behaviour falls within the Code of Conduct – and collect any information he/she deems necessary.

This will normally be done within 10 working days. If the allegation is about a matter which falls outside of the Code of Conduct or is considered to be within one of the criteria set out below the complaint will not usually progress beyond this initial assessment stage, namely:

- if the complaint is the same or substantially the same as a complaint previously dealt with
- if the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
- if the complaint is trivial
- if the complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- if the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- if the complaint is covered by the Council's persistent and vexatious complaints policy and the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- if the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration
- if the complaint is about a person who is no longer a member of a relevant council and there are no overriding public interest reasons to merit further consideration.

At this stage, and following consultation with the Independent Person, if the complaint is not to progress further the Monitoring Officer will notify the complainant in writing of that fact, with reasons. The Monitoring Officer will also write to the subject member with details of the complaint, the decision made and the reasons for the decision. The name

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of the complainant will be disclosed to the subject member unless confidentiality has been requested and the Monitoring Officer considers a request to be justified.

The Council will in appropriate circumstances pass to the police or Director of Public Prosecutions any allegations it receives which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.

For those complaints which are to be taken beyond the preliminary process outlined above the following steps will be followed.

The Monitoring Officer will, following consultation with the Independent Person, determine what action is to be taken on the complaint in accordance with the Assessment Criteria set out in this Procedure. The options available are:

- to make no finding as to whether there has been a breach of the Code and take no further action
- to make no finding as to whether there has been a breach of the Code but determine that some action other than an investigation is appropriate including, for example, some form of local settlement or conciliation exercise
- to find no breach of the Code
- to find a breach of the Code without an investigation but take no action
- to find a breach of the Code without an investigation and take some action.

If after following the steps detailed above, the Monitoring Officer is of the view that local settlement is unlikely or unachievable, or the complaint warrants it, they shall, following consultation with the Independent Person, institute a formal investigation and report the findings of that investigation together with the views of the Independent Person on those findings to the full Standards Committee for hearing and determination (with neither party having the right of attendance).

The Monitoring Officer may, in appropriate circumstances, refer the complaint to an Assessment Sub-Committee of the Standards Committee (comprising 3 Members of the Standards Committee of whom at least one shall be a co-opted member) to determine whether or not the allegation appears to disclose a failure to observe the Members' Code of Conduct and then, if it judges that such a failure is disclosed, whether the matter merits investigation. Thereafter and, as appropriate, – the Monitoring Officer shall:

- consult the Independent Person if the Assessment Sub-Committee suggest any action other than a formal investigation

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- institute a formal investigation if the Assessment Sub-Committee is of the view that the matter merits investigation
- report the findings of that investigation together with the views of the Independent Person on those findings to the full Standards Committee for hearing and determination (with neither party having the right of attendance).

The Monitoring Officer and the subject member may seek the views of the nominated Independent Person at any time during this process.

The assessment and review of complaints will normally be conducted by an Assessment Sub-Committee or the full Standards Committee in 'Part II or closed' session and information relating thereto will be considered exempt under the provisions of the Local Government (Access to Information) Act 1985 and Schedule 12A of the Local Government Act 1972, subject to the application of the [public interest test](#), as appropriate.

Data protection requirements will be complied with and may prevent the public disclosure of information relating to complaints.

On completion of the assessment or consideration of the review a written summary of the assessment will be published. Once this has been sent to the subject member and the complainant the decision notice (i.e minutes of the meeting) will be available for public inspection at the Council's offices for 6 years from the date of the assessment or review and a copy will be placed on the Councils website in line with the requirements of the Local Government (Access to Information) Act 1985 and Schedule 12A of the Local Government Act 1972.

Step	Action
1	The Monitoring Officer will consider whether the complaint falls within the Complaints Procedure. If the complaint is considered to fall within the remit of the Complaints Procedure the Monitoring Officer will write to the subject member with details of the complaint, including those of the complainant (unless any confidentiality request has been agreed). The Monitoring Officer will also provide the subject member with the name and contact details of the Independent Person who has been appointed to advise on the particular complaint and who the subject member may contact to seek their views. At this stage the subject member will be given an opportunity to provide the Monitoring Officer with a written response to the complaint. A time limit for providing a written response may be imposed.
2	The subject member will provide their written comments, with supporting documentation or indicate that they do not wish to provide a written response to the complaint in which case the time limit for the submission of a written response will lapse.

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3	The Monitoring Officer will consider the complaint again in the context of any written submissions and supporting documentation provided by the subject member.
4	<p>The Monitoring Officer will, following consultation with the Independent Person, determine what action to be taken on the complaint in accordance with the Assessment Criteria set out in this Procedure. The options available are:</p> <ul style="list-style-type: none"> <li>(i) to make no finding as to whether there has been a breach of the Code and take no further action;</li> <li>(ii) to make no finding as to whether there has been a breach of the Code but determine that some action other than an investigation is appropriate including, for example, some form of local settlement or conciliation exercise;</li> <li>(iii) to find no breach of the Code;</li> <li>(iv) to find a breach of the Code without an investigation but take no action;</li> <li>(v) to find a breach of the Code without an investigation and take some action;</li> <li>(vi) to refer the complaint to an Assessment Sub Committee to determine whether or not the complaint should be formally investigated</li> <li>(vii) to require the complaint to be formally investigated;</li> <li>(viii) to conclude that the circumstances of the complaint indicate that an offence under Chapter 7 of Part 1 of the Localism Act 2011 may have been committed and that the complaint ought to be investigated, by the police where appropriate, to determine whether a prosecution should be brought..</li> </ul>
5	Where a complaint is investigated, a report shall be generated which shall be presented to the full Standards Committee for consideration. Before that happens, the subject Member will be consulted on both the draft report and final report (with 10 working days to respond) and their views be reported to the Standards Committee alongside the investigation report. Having considered the investigation report the Standards Committee shall make a finding as to whether or not there has been a breach of the Code and, if there is a finding of a breach, what action should be taken.
6	The outcome of the determination of the complaint will be notified in writing to the complainant and the subject member within 5 working days.

[NB: Steps 1 to 4 above will normally be conducted within 28 days of receipt of the complaint. If it is not possible to complete any such tasks within that time the complainant and subject member will be contacted and advised of the delay and when the Steps will be completed.]

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## **Part 6 - What happens after my complaint has been looked at?**

When a decision has been reached on your complaint the Council will notify you in writing telling you what that decision is and what action has or will be taken.

Any action or investigation will be implemented. If other action is determined as appropriate and either party declines to cooperate that will be reported to the Monitoring Officer who may decide to progress the original complaint through the process as set out above.

If potential criminal offences are identified and the complaint referred for investigation with a view to prosecution the appropriate procedures of the police or Council will be followed so as to protect the integrity of their investigation.

Any investigations and hearings following the Standards investigation are outside of the scope of this procedure and will be subject to separate procedural rules.

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## Part 7 - Withdrawal of complaints

Any request to withdraw a complaint will normally be granted but in considering such a request from the complainant the Monitoring Officer will consider the following factors:

(i) whether the public interest in taking action on the complaint outweighs the complainant's desire to withdraw it;

(ii) whether the complaint is such that action can or should be taken on it without the complainant's participation; and

(iii) whether there appears to be an identifiable underlying reason for the request to withdraw the complaint such as whether there is information to suggest that the complainant may have been pressurised into withdrawing the complaint.

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## Part 8 - Complainant confidentiality

The subject member will, in normal circumstances, be told from the outset who has complained about them. If a complainant asks for their identity to be withheld their request will be considered by the Monitoring Officer prior to the member being notified that a complaint has been made.

Each request for confidentiality will be considered on its merits and in determining such a request the following will be considered:

(i) whether the complainant reasonably believes that they, or those connected to them, will be at risk of harm if their identity is disclosed;

(ii) that the complainant is reasonably concerned about the consequences to their employment, or those connected to them, if their identity is disclosed;

(iii) that the complainant, or somebody closely connected to them, suffers from a medical condition and there is evidence of medical risks associated with their identity being disclosed or confirmation from an appropriate medical professional that that is the case; and

(iv) the public interest. In some cases the public interest in proceeding with the complaint may outweigh the complainant's wish to have their identity withheld.

If it is not considered appropriate to grant a request for confidentiality the complainant will be offered the opportunity to withdraw the complaint rather than proceed with it.

Confidentiality will always be respected when requested in relation to allegations of harassment, bullying or victimisation, however, complainants must recognise that maintaining confidentiality may hinder the effectiveness of any investigation.



## Part 9 - Conflicts of interests

If any Officer has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to ensure that the complaint is dealt with by someone other than them. Any conflicts identified during the course of a matter will be managed appropriately by the Monitoring Officer or their nominee.

An Officer who has previously advised a subject member or has given advice to the complainant about the issues giving rise to a complaint must seek advice from their line manager as to whether they can properly be involved in the conduct of a related complaint. Public perception and the public interest will be considered.

If any Independent Person has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to ensure that the complaint is dealt with by someone other than them. Where this occurs another Independent Person will be appointed and the appropriate person(s) notified.

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## Part 10 - Retention of Records

All records relating to any complaint and the consideration thereof will be stored in accordance with the County Council's records management policy and procedures and the provisions of the Local Government (Access to Information) Act 1985 and Schedule 12A of the Local Government Act 1972.

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<https://www.devon.gov.uk/democracy/guide/making-a-complaint-about-a-devon-county-councillor/>

## Part 11 - Generally

All complaints and reviews will be considered on their merits and according to the facts.

The Assessment Criteria, which are subject to review by the County Council's Standards Committee, will be used as guidance in the consideration and determination of complaints and reviews but the Monitoring Officer or other decision maker, which will be an Assessment Sub-Committee or the full Standards Committee when it is not the Monitoring Officer, are entitled to depart from these criteria when they consider it appropriate to do so.

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## Part 12 - Assessment Criteria

It is recognised that while complaints may relate to the same aspect of the Code they may differ considerably in terms of the facts and how serious they are. There may be huge differences in the relevance and amount of detail regarding the complaint. For these reasons these Assessment Criteria can only be a guide

### Overriding criteria

These three tests will be applied during the initial assessment of a complaint:

- is the complaint about one or more named members of the County Council?
- was the subject member in office at the time of the alleged conduct?
- did the incident complained of happen before the Council adopted the Code of Conduct?
- if proven, would the complaint disclose a breach of the Code of Conduct?

### No finding of whether there is a breach of the Code

If on the facts it is not possible to determine whether there has been or may have been a breach of the Code and the alleged conduct does not merit an investigation, having regard to the public interest, this is the appropriate finding to make.

### No finding of whether there is a breach of the Code but action other than investigation is appropriate

If on the facts it is not possible to determine whether there has been or may have been a breach of the Code, the alleged conduct does not merit an investigation, having regard to the public interest, but the allegation and any response from the subject member disclose an underlying issue that action such as mediation or training on the Code or council procedures might assist with, this is the appropriate finding to make. The other action information below needs to be considered in these circumstances.

### Finding of no breach of the Code

If the facts available demonstrate on the balance of probabilities that there has been no breach of the Code, this is the appropriate finding to make. If there is no breach of the Code a sanction cannot be imposed but other action such as mediation, conciliation, training or some other form of local settlement might still be considered.

### Finding of a breach of the Code without an investigation

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A finding that the Code of Conduct has been breached without the need for an investigation will usually be appropriate in the following circumstances:

- it can clearly be shown that from the information that has been provided by the subject member and the complainant that a breach of the Code has occurred without the need for an investigation
- the subject member has admitted to the breach of the Code, whether or not they have offered to remedy the breach
- it can be shown that an investigation is unlikely to be able to establish any further independent relevant evidence regarding the complaint or that the cost of obtaining any further evidence would not be justified having regard to the public interest and that on the evidence supplied a breach of the Code can be shown

A breach of the Code without investigation can only be found if the complaint satisfies the first three initial tests and that it can be clearly shown, on the balance of probabilities, that a breach of the Code of Conduct has occurred.

## **No Further Action**

If a breach of the Code is found but it is trivial, a technical breach or otherwise of limited effect it may be appropriate to take no further action.

## **Referral for other action**

A complaint may be referred for other action in the circumstances listed below. Other action may be appropriate whether a breach is found or not. However, in general, other action may be used where the complaint discloses a widespread problem rather than a specific one concerning the members conduct.

Referring a matter for other action effectively closes the door on a review of the decision as the matter cannot subsequently be referred for investigation if the complainant is dissatisfied with the outcome of the other action. As such, other action should be exercised only where appropriate. If necessary the assessment of a complaint can be deferred while further information is obtained and other action is being considered. In addition, the subject member and the complainant can be contacted to see if they will accept other action as a way of resolving the complaint, such as by way of an apology.

The following should be considered in determining whether it is appropriate to refer a complaint for other action:

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- does taking further action provide an opportunity to resolve the issue and to prevent any similar issues arising in the future and promote good governance?
- does the complaint present a potentially less serious breach of the Code than would require the matter to be referred for investigation and is any benefit to be gained from referring the matter for investigation?
- is the subject member a member of an authority which appears to have a poor understanding of the Code and relevant procedures?
- is the council of which the subject member is a member suffering from a widespread breakdown in internal relationships and trust where a course of action other than an investigation of a complaint may be more appropriate and beneficial to that council?

## **Referral for Investigation**

A complaint should usually be referred for investigation in the following circumstances:

- the complaint has passed the initial tests
- the subject member has denied the allegations but the information presented indicates that there may be a breach of the Code
- on the information provided the potential breach of the Code of Conduct is sufficiently serious that an investigation should be undertaken to be discount or substantiate the complaint and to determine what action, if any, is appropriate

## **Potential offences under the Localism Act 2011**

If it is considered that the allegation concerned may disclose an offence under the Localism Act it should be referred to the police or other appropriate person(s) for further consideration as to whether there should be an investigation with a view to prosecution. No prosecution can be brought without the consent of the Director of Public Prosecutions.

If it transpires that no offence was committed, whether following trial or otherwise, the complaint ought to be reintroduced to this procedure for determination of any breach of the code and appropriate sanction, if any.

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